

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AUXIER WATER COMPANY)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 96-362
)	
CITY OF PRESTONSBURG AND)	
PRESTONSBURG CITY'S UTILITIES)	
COMMISSION)	
)	
DEFENDANTS)	

O R D E R

Auxier Water Company ("Auxier") petitions for rehearing of the Commission's Order of April 2, 1997 in which the Commission dismissed Count III of Auxier's Complaint. Auxier requests a declaration that the April 2, 1997 Order is not a final determination of all outstanding issues and that, upon a final disposition of all outstanding issues, Auxier may appeal all issues in this proceeding including the Commission's dismissal of Count III. As the Commission lacks the authority to extend the time to bring an action for review, and as no issues related to Count III of the Complaint remain undecided, we deny Auxier's petition.

KRS 278.410 establishes a party's right to judicial review of a Commission order.

It provides:

Any party to a commission proceeding or any utility affected by an order of the commission may, within thirty (30) days after service of the order, or within twenty (20) days after its

application for rehearing has been denied by failure of the commission to act, or within twenty (20) days after service of the final order on rehearing, when a rehearing has been granted, bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. Service of a commission order is complete three (3) days after the date the order is mailed. Notice of the institution of such action shall be given to all parties of record before the commission.

KRS 278.410(1). A party's failure to bring an action for review within the specified time deprives the reviewing court of subject matter jurisdiction over the action. See Kentucky Utilities Co. v. Farmers Rural Electric Cooperative Corp., Ky., 361 S.W.2d 300 (1962). Neither KRS 278.410 nor any other provision of KRS Chapter 278 authorizes the Commission to extend the time for bringing an action for review, or requires that all issues raised within a Commission proceeding be resolved when such an action is brought.

The Commission, moreover, can find no legitimate reason to delay judicial review of the April 2, 1997 Order.¹ It is dispositive of the issues raised in Count III of Auxier's Complaint. Those issues that remain in dispute, and which the Commission must hear, will not affect that decision.

¹ In its petition, Auxier refers to City of Franklin v. Kentucky Public Service Commission, No. 96-CI-00250 (Franklin Cir. Ct. Apr. 2, 1996). The facts of that case are clearly distinguishable. In City of Franklin, a party sought judicial review of an Order in which the Commission required the refund of all monies which a municipal utility had charged and collected in excess of its contract rate and scheduled a hearing to determine the amount of any overcharges. Considering the Order as interlocutory in nature, the Franklin Circuit Court dismissed the action. In the case currently before the Commission, no further action remains on the issue of the authority of the Prestonsburg City's Utility Commission to serve certain geographical areas. The issue is ripe for judicial review.

IT IS THEREFORE ORDERED that Auxier's Petition for Rehearing is denied.

Done at Frankfort, Kentucky, this 6th day of May, 1997.

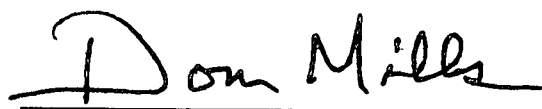
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director